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April 5, 1995

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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: In the Matter of COMPUTER III Further Remand
Proceedings: Bell Operating Company Provision
of Enhanced Services - CC Docket No. 95-20

Dear Mr. Caton:

Enclosed please find an original and nine copies of the
comments of the New York State Department of Public Service in
the above-referenced proceeding.

Respectfully submitted,

Mary E. Burgess /ay

Mary E. Burgess
Staff Counsel

c:MEB:ay:CC95-20.Ltr

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
COMPUTER III Further) CC Docket No. 95-20
Remand Proceedings:)
Bell Operating Company)
Provision of Enhanced Services)

COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

INTRODUCTION

The New York State Department of Public Service (NYDPS) submits these comments in response to the Federal Communication Commission's (Commission) Notice of Proposed Rulemaking (NPRM) regarding structural separation requirements for BOCs offering enhanced services.

In the past, the NYDPS has opposed the notion of uniform treatment of enhanced services. We continue to think that the number and variety of enhanced services, as well as variant market conditions, defy reliance on any blanket regulatory policy to achieve the efficient and effective provision of enhanced services.^{1/}

The requirement for separate subsidiaries should be dependent upon the state of competition in the local exchange service market, the state of competition in the enhanced service market, and the attributes of the specific service under consideration. The analysis of the market conditions and service

^{1/} NYDPS Comments re: In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards CC Docket No. 90-623. Page 2 of Comments dated March 7, 1991.

characteristics necessary to determine the need for separate subsidiaries can be most effectively performed at the state level. At the same time, the NYDPS endorses federal initiatives that foster the application of Open Network Architecture at the interstate level to the extent that the network allows for unbundled access to enhanced as well as basic services.

I. THE IMPOSITION OF STRUCTURAL SEPARATION
SHOULD DEPEND ON THE MARKET CONDITIONS AND
SERVICE CHARACTERISTICS OF EACH ENHANCED SERVICE

The NYDPS recognizes that offering enhanced services through a separate subsidiary has the potential to minimize discrimination and cross-subsidy concerns. At the same time, however, requiring separate subsidiaries may result in customer confusion or inconvenience associated with the loss of branding and one-stop shopping, a reduction of potential synergistic economic savings, and the creation of additional costs that are ultimately borne by the consumer. Thus, the benefits of a flexible policy appear to outweigh the risks of cross-subsidization.

Because each enhanced service has different market and technical characteristics, a "one size fits all" regulatory policy would be inappropriate. Consequently, NYDPS submits that the separate subsidiary requirement should be reserved only for those specific services and market conditions which so warrant. These factors can be most effectively evaluated in each state, where the regulators are in the best position to identify the safeguards that are necessary to protect consumers from cross

subsidies, competitors from predatory pricing, and the companies from an inefficient regulatory policy. The Commission should carefully examine the costs and benefits associated with requiring separate subsidiaries versus permitting enhanced services that are integral to the network to be provided without a separate subsidiary.

For example, enhanced services such as speed calling, audiotext services and videotext services, can be an integral part of the network or which greatly benefit from direct connection with other network related services, do not lend themselves to the separate subsidiary requirement. Requiring a separate subsidiary in this instance would be economically inefficient. On the other hand, services such as video programming, which are distinct from network services, could be offered through a separate subsidiary without unduly reducing efficiencies.

The degrees of local exchange market competition and enhanced service market competition also indicate the need (or lack thereof) for regulatory safeguards for specific services. Each state has a different level of competition in its local exchange market, and therefore, each state has developed unique consumer safeguard requirements. The amount of local competition, the extent to which unbundling has taken place to eliminate competitive entry roadblocks, and regulatory policies such as price caps all influence the need for separate subsidiary

safeguards. In addition, if a specific market is itself highly competitive, mandating separate subsidiaries may not be warranted.

Thus, the level of competition in the different markets varies considerably from state to state, and the economic efficiencies of product integration vary considerably from one service to another. The state Commissions are in the best position to examine these factors to determine the value of utilizing separate subsidiaries on a service-by-service basis.

II. THE MERITS OF INTERSTATE ONA UNBUNDLING REQUIREMENTS

Rules governing the interconnection of new entrants to the public network constitute a valuable regulatory tool that can be used to promote competition effectively. Linking the disaggregation of the network into accessible components with freedom of entry into the market to offer integrated enhanced services benefits the general public. For example, New York has required Open Network Architecture principles to unbundle the local network into elements such as links and ports. This unbundling process has facilitated local competition and enabled various entrants to agree upon issues such as the exchange of local traffic and number portability.

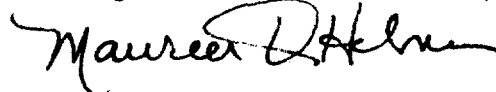
The NYSDPS fully endorses the principles of Open Network Architecture at the interstate level, and considers the concept at this juncture to be vital to the development of equitable competition in telecommunications. Unbundling requirements generally benefit the competitive market and, as a result, can reduce the need for separate subsidiaries and other

types of safeguards. Finally, we recognize that given the current level of competition in the telecommunications industry, ONA continues to be an essential regulatory tool in the effort to bring greater competition to the telecommunications industry.

CONCLUSION

It is our view that the requirement for separate subsidiaries should be determined based upon the specific service and the status of the local market in each market. Conversely, a general requirement of separate subsidiaries for all enhanced services would result in inefficiencies and over-regulation for many potentially beneficial customer services. In sum, it is contradictory to attempt to foster industry creativity and diversity by establishing an inflexible policy requiring separate subsidiaries. Additionally, it should be noted that Open Network Architecture has been, and should continue to be, a key regulatory tool in the effort to provide an equitable regulatory structure for the telecommunications industry.

Respectfully submitted,



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Dated: April 4, 1995
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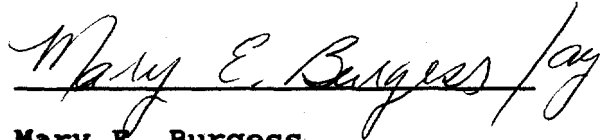
CC Docket 95-20

In the Matter of COMPUTER III Further
Remand Proceedings: Bell Operating
Company Provision of Enhanced Services

Comments of New York State
Department of Public Service

CERTIFICATE OF SERVICE

I, Mary E. Burgess, hereby certify that an original and nine copies of the above-captioned proceeding were sent via Airborne Express to Mr. Caton, and by first class United States mail, postage prepaid, to all parties on the attached service list.

A handwritten signature in cursive script, reading "Mary E. Burgess / ay", written over a horizontal line.

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